

House Bill 3386

Sponsored by Representative KENNEMER (at the request of Oregon Association of County Engineers and Surveyors)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies provisions authorizing dedication, conveyance or grant of property in subdivision or partition process.

A BILL FOR AN ACT

1
2 Relating to transfer of property noted on plat; amending ORS 92.010, 92.050, 92.060, 92.075, 92.150
3 and 92.190.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 92.010 is amended to read:

6 92.010. As used in ORS 92.010 to 92.192, unless the context requires otherwise:

7 (1) "Declarant" means the person who files a declaration under ORS 92.075.

8 (2) "Declaration" means the instrument described in ORS 92.075 by which the subdivision or
9 partition plat was created.

10 (3)(a) "Lawfully established unit of land" means:

11 (A) A lot or parcel created pursuant to ORS 92.010 to 92.192; or

12 (B) Another unit of land created:

13 (i) In compliance with all applicable planning, zoning and subdivision or partition ordinances
14 and regulations; or

15 (ii) By deed or land sales contract, if there were no applicable planning, zoning or subdivision
16 or partition ordinances or regulations.

17 (b) "Lawfully established unit of land" does not mean a unit of land created solely to establish
18 a separate tax account.

19 (4) "Lot" means a single unit of land that is created by a subdivision of land.

20 (5) "Negotiate" means any activity preliminary to the execution of a binding agreement for the
21 sale of land in a subdivision or partition, including but not limited to advertising, solicitation and
22 promotion of the sale of such land.

23 **(6) "Nonbuildable unit" means a single, nonbuildable lot or parcel created by subdivision**
24 **or partition for use as open space, a common driveway, wetlands, utility infrastructure or**
25 **another similar purpose.**

26 [(6)] (7) "Parcel" means a single unit of land that is created by a partition of land.

27 [(7)] (8) "Partition" means either an act of partitioning land or an area [*or tract*] of land parti-
28 tioned.

29 [(8)] (9) "Partition plat" includes a final map and other writing containing all the descriptions,
30 locations, specifications, provisions and information concerning a partition.

31 [(9)] (10) "Partitioning land" means dividing land to create not more than three parcels [*of*

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 *land*] **and three nonbuildable units** within a calendar year, but does not include:

2 (a) Dividing land as a result of a lien foreclosure, foreclosure of a recorded contract for the sale
3 of real property or the creation of cemetery lots;

4 (b) Adjusting a property line as property line adjustment is defined in this section;

5 (c) Dividing land as a result of the recording of a subdivision or condominium plat;

6 (d) Selling or granting by a person to a public agency or public body of property for state
7 highway, county road, city street or other right of way purposes if the road or right of way complies
8 with the applicable comprehensive plan and ORS 215.213 (2)(p) to (r) and 215.283 (2)(q) to (s). How-
9 ever, any property sold or granted for state highway, county road, city street or other right of way
10 purposes shall continue to be considered a single unit of land until the property is further subdivided
11 or partitioned; or

12 (e) Selling or granting by a public agency or public body of excess property resulting from the
13 acquisition of land by the state, a political subdivision or special district for highways, county roads,
14 city streets or other right of way purposes when the sale or grant is part of a property line ad-
15 justment incorporating the excess right of way into adjacent property. The property line adjustment
16 shall be approved or disapproved by the applicable local government. If the property line adjustment
17 is approved, it shall be recorded in the deed records of the county where the property is located.

18 [(10)] (11) "Plat" includes a final subdivision plat, replat or partition plat.

19 [(11)] (12) "Property line" means the division line between two units of land.

20 [(12)] (13) "Property line adjustment" means a relocation or elimination of all or a portion of the
21 common property line between abutting properties that does not create an additional lot or parcel.

22 [(13)] (14) "Replat" means the act of platting the lots, parcels and easements in a recorded
23 subdivision or partition plat to achieve a reconfiguration of the existing subdivision or partition plat
24 or to increase or decrease the number of lots in the subdivision.

25 [(14)] (15) "Road" or "street" means a public or private way that is created to provide ingress
26 or egress for persons to one or more lots, parcels[,] **or** areas [*or tracts*] of land, excluding a private
27 way that is created to provide ingress or egress to such land in conjunction with the use of such
28 land for forestry, mining or agricultural purposes.

29 [(15)] (16) "Sale" or "sell" includes every disposition or transfer of land or an interest or estate
30 therein.

31 [(16)] (17) "Subdivide land" means to divide land to create four or more lots **and four or more**
32 **nonbuildable units** within a calendar year.

33 [(17)] (18) "Subdivision" means either an act of subdividing land or an area [*or a tract*] of land
34 subdivided.

35 [(18)] (19) "Subdivision plat" includes a final map and other writing containing all the de-
36 scriptions, locations, specifications, dedications, provisions and information concerning a subdivision.

37 [(19)] (20) "Utility easement" means an easement noted on a subdivision plat or partition plat
38 for the purpose of installing or maintaining public or private utility infrastructure for the provision
39 of water, power, heat or telecommunications to the public.

40 **SECTION 2.** ORS 92.050 is amended to read:

41 92.050. (1) A person [*shall*] **may** not submit a plat of a subdivision or partition for record[,] until
42 all the requirements of ORS 209.250 and the plat requirements of the subdivision or partition have
43 been met.

44 (2) The survey for the plat of the subdivision or partition shall be done in a manner to achieve
45 sufficient accuracy that measurements may be taken between monuments within one-tenth of a foot

1 or one ten-thousandth of the distance shown on the subdivision or partition plat, whichever is
 2 greater.

3 (3) The survey and plat of the subdivision or partition shall be made by a registered professional
 4 land surveyor.

5 (4) The plat of the subdivision or partition shall be of sufficient scale and lettering size, ap-
 6 proved by the county surveyor, so that:

7 (a) The survey and mathematical information and all other details are clearly and legibly shown
 8 on the plat.

9 (b) Each lot or parcel is numbered consecutively.

10 (c) The lengths and courses of the boundaries of each lot or parcel are shown on the plat.

11 (d) Each street is named and shown on the plat.

12 (5) The locations and descriptions of all monuments found or set must be carefully recorded
 13 upon all plats and the proper courses and distances of all boundary lines, conforming to the
 14 surveyor's certificate, must be shown.

15 (6) The location, dimensions and purpose of all recorded and proposed public and private ease-
 16 ments must be shown on the subdivision or partition plat [*along with the county clerk's recording*
 17 *reference if the easement has been recorded by the county clerk. Private*]. **If the easement has been**
 18 **recorded, the recording index numbers and the date of recording must be noted on the final**
 19 **plat.** Easements become effective upon the recording of the plat.

20 (7) The area of each lot or parcel must be shown on the subdivision or partition plat.

21 (8) In addition to showing bearings in degrees, minutes and seconds and distances in feet and
 22 hundredths of a foot, the following curve information must be shown on the subdivision or partition
 23 plat either on the face of the map or in a separate table:

24 (a) Arc length;

25 (b) Chord length;

26 (c) Chord bearing;

27 (d) Radius; and

28 (e) Central angle.

29 (9) A city or county may not require that a final subdivision, condominium or partition plat show
 30 graphically or by notation on the final plat any information or requirement that is or may be subject
 31 to administrative change or variance by a city or county or any other information unless authorized
 32 by the county surveyor.

33 **SECTION 3.** ORS 92.075 is amended to read:

34 92.075. (1) In order to subdivide or partition any property, the declarant shall include on the face
 35 of the subdivision or partition plat[, *if a partition plat is required,*] a declaration, taken before a
 36 notary public or other person authorized by law to administer oaths, stating that the declarant has
 37 caused the subdivision or partition plat to be prepared and the property **to be** subdivided or parti-
 38 tioned [*in accordance with the provisions of this chapter. Any dedication of land to public purposes*
 39 *or any public or private easements created, or any other restriction made, shall be stated in the decla-*
 40 *ration.*] **as provided in this chapter.**

41 **(2) A dedication of land to a public purpose must be stated in the declaration. A decla-**
 42 **ration may:**

43 **(a) Grant public or private easements shown on the plat under ORS 92.050.**

44 **(b) Impose restrictions.**

45 **(3) A dedication of lots or parcels of land for a public purpose or a public easement:**

1 (a) If conveyed or granted to the city or county with jurisdiction over the division of land,
 2 may be accomplished by notation on the plat; or

3 (b) If conveyed or granted to another public body or a private party, must be accom-
 4 plished by a separate deed. The deed must be recorded simultaneously with the plat and the
 5 plat must contain the recording index number of the separate deed.

6 [(2)] (4) If the declarant is not the fee owner of the property, the fee owner and the vendor under
 7 any instrument of sale shall also execute the declaration for the purpose of consenting to the
 8 [*property being subdivided or partitioned*] **subdivision or partition of the property and to a dedi-
 9 cation, grant or conveyance of the property in the declaration.**

10 [(3)] (5) If the [*subdivision or partition plat contains any dedication or donation of land to public
 11 purposes*] **fee owner of the property has granted a security interest in the property**, the holder
 12 of any mortgage or trust deed shall also execute the declaration for the purpose of consenting to
 13 the **subdivision or partition of the property** [*being submitted to the provisions of this chapter*].

14 [(4)] (6) Notwithstanding the provisions of subsections (1) to [(3)] (5) of this section, the fee
 15 owner, vendor or [*the*] mortgage or trust deed holder may record an affidavit consenting to the
 16 **subdivision or partition of the property under the declaration** [*of property being subdivided or
 17 partitioned and to any dedication or donation of property to public purposes. The affidavit must indi-
 18 cate the recorded document by which the interest in the property was acquired and all information re-
 19 quired by ORS 93.410 to 93.530 and must be recorded in deed records at the same time as the
 20 subdivision or partition plat.*] **and to a dedication, grant or conveyance of the property in the
 21 declaration.** The county clerk shall note the recording information of the affidavit on the original
 22 and any exact copies of the subdivision or partition plat. **The affidavit must:**

23 (a) **Indicate the recorded document, including the recording index numbers and the date
 24 of recording, by which the interest in the property was acquired by the fee owner, the vendor
 25 or the holder of the mortgage or trust deed;**

26 (b) **Comply with ORS 93.410 to 93.530; and**

27 (c) **Be recorded in deed records at the same time as the subdivision or partition plat.**

28 **SECTION 4.** ORS 92.150 is amended to read:

29 92.150. [*Every donation or grant to the public, including streets and alleys, or to any individual,
 30 religious society, corporation or body politic, marked or noted as such on the subdivision or partition
 31 plat wherein the donation or grant was made, shall be considered a general warranty to the donee or
 32 grantee for the use of the donee or grantee for the purposes intended by the donor or grantor.*] **Every
 33 dedication, conveyance or grant for a public purpose that is marked or noted on a subdivision
 34 or partition plat and made to the city or county with jurisdiction over the division of land
 35 is deemed to provide a general warranty of the property to the city or county.**

36 **SECTION 5.** ORS 92.060 is amended to read:

37 92.060. (1) The initial point, also known as the point of beginning, of a plat must be on the ex-
 38 terior boundary of the plat and must be marked with a monument that is either galvanized iron pipe
 39 or an iron or steel rod. If galvanized iron pipe is used, the pipe may not be less than three-quarter
 40 inch inside diameter and 30 inches long. If an iron or steel rod is used, the rod may not be less than
 41 five-eighths of an inch in least dimension and 30 inches long. The location of the monument shall
 42 be with reference by survey to a section corner, one-quarter corner, one-sixteenth corner, Donation
 43 Land Claim corner or to a monumented lot corner or boundary corner of a recorded subdivision,
 44 partition or condominium plat. When setting a required monument is impracticable under the cir-
 45 cumstances, the county surveyor may authorize the setting of another type of monument.

1 (2) In subdivision plats, the intersections, the initial point, also known as the point of beginning,
 2 the point of ending, points of curves and points of tangents, or the point of intersection of the curve
 3 if the point is within the pavement area of the road, of the centerlines of all streets and roads and
 4 all points on the exterior boundary where the boundary line changes direction, must be marked with
 5 monuments either of galvanized iron pipe or iron or steel rods. If galvanized iron pipe is used, the
 6 pipe may not be less than three-quarter inch inside diameter and 30 inches long. If iron or steel rods
 7 are used, the rod may not be less than five-eighths of an inch in least dimension and 30 inches long.
 8 When setting a required monument is impracticable under the circumstances:

- 9 (a) The county surveyor may authorize the setting of another type of monument; or
- 10 (b) The county surveyor may waive the setting of the monument.

11 (3) All lot and parcel corners except lot corners of cemetery lots must be marked with monu-
 12 ments of either galvanized iron pipe not less than one-half inch inside diameter or iron or steel rods
 13 not less than five-eighths inch in least dimension and not less than 24 inches long. When setting a
 14 required monument is impracticable under the circumstances:

- 15 (a) The surveyor may set another type of monument; or
- 16 (b) The county surveyor may waive the setting of the monument.

17 (4) A surveyor shall set monuments with sufficient accuracy that measurements may be taken
 18 between monuments within one-tenth of a foot or within one ten-thousandth of the distance shown
 19 on the subdivision or partition plat, whichever is greater.

20 (5) A surveyor shall set monuments on the exterior boundary of a subdivision, unless the county
 21 surveyor waives the setting of a particular monument, where changes in the direction of the
 22 boundary occur and shall reference the monuments on the plat of the subdivision before the plat of
 23 the subdivision is offered for recording. However, the surveyor need not set the remaining monu-
 24 ments for the subdivision prior to the recording of the plat of the subdivision if:

- 25 (a) The registered professional land surveyor performing the survey work certifies that the re-
 26 maining monuments will be set, unless the county surveyor waives the setting of a particular monu-
 27 ment, on or before a specified date as provided in ORS 92.070 (2); and
- 28 (b) The person subdividing the land furnishes to the county or city by which the subdivision was
 29 approved a bond, cash deposit, irrevocable letter of credit issued by an insured institution as defined
 30 in ORS 706.008 or other security as required by the county or city guaranteeing the payment of the
 31 cost of setting the remaining monuments for the subdivision as provided in ORS 92.065.

32 (6) A surveyor shall set all monuments on the exterior boundary and all parcel corner monu-
 33 ments of partitions, unless the county surveyor waives the setting of a particular monument, before
 34 the partition plat is offered for recording. Unless the governing body provides otherwise, any parcels
 35 created outside an urban growth boundary that are greater than 10 acres need not be surveyed or
 36 monumented.

37 (7) Except as provided in subsections (8) and (9) of this section, a property line adjustment must
 38 be surveyed and monumented in accordance with subsection (3) of this section and a survey, com-
 39 plying with ORS 209.250, must be filed with the county surveyor.

40 (8) Unless the governing body of a city or county has otherwise provided by ordinance, a survey
 41 or monument is not required for a property line adjustment when the abutting properties are each
 42 greater than 10 acres. Nothing in this subsection exempts a local government from minimum area
 43 requirements established in acknowledged comprehensive plans and land use regulations.

44 (9) The requirements of subsection (7) of this section do not apply to property transferred
 45 through a property line adjustment as described in ORS 92.010 [(9)(e)] **(10)(e)**.

1 **SECTION 6.** ORS 92.190 is amended to read:

2 92.190. (1) The replat of a portion of a recorded plat shall not act to vacate any recorded
3 covenants or restrictions.

4 (2) Nothing in ORS 92.180 to 92.190 is intended to prevent the operation of vacation actions by
5 statutes in ORS chapter 271 or 368.

6 (3) The governing body of a city or county may use procedures other than replatting procedures
7 in ORS 92.180 and 92.185 to [*adjust property lines as described in ORS 92.010 (12), as long as those*
8 *procedures include*] **make a property line adjustment if the procedures require** the recording,
9 with the county clerk, of conveyances conforming to the approved property line adjustment as sur-
10 veyed in accordance with ORS 92.060 (7).

11 (4) A property line adjustment deed shall contain the names of the parties, the description of the
12 adjusted line, references to original recorded documents and signatures of all parties with proper
13 acknowledgment.

14